

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: [REDACTED] STATINTL
OLC 7D35

EXTENSION

6136

NO.

DATE

10 May 1972

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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STATINTL

OGC HAS REVIEWED.

Att. A is an excerpt from P. L. 92-255 establishing a Federal employee program and rights for "drug abusers" and specifically exempting CIA, similar to Title II of P.L. 91-616 concerning alcoholism. [REDACTED] contact in connection with a draft revision of Agency medical regulations on alcoholism suggests whether any other regulation revisions are in order. This may depend on whether BEC or CSC has construed that Title II of P. L. 91-616, "(c)(1) no person may be denied or deprived of Federal employment or a Federal professional or other license or right solely on the ground of prior drug abuse or prior alcoholism," repeals specific bars to compensation for disability "appropriately caused by the intoxication" or "due to... intemperance." Agency regulations carry the Compensation Act language and the term "intemperance" is a bar to disability retirement under the CIA Retirement Act. From the statement by Senator Hughes when he introduced S. 3502 (att. B), it appears that Title II does not overcome the specific prohibition in the CS Retirement Act. It seems that an argument could be advanced that the word "right" in Title II overcomes such bars where entitlements are involved.

In connection with the drug abuse provision, your attention is invited to the conference

report (att. c) which makes it clear that the Federal employees are not to lose pensions and other collateral rights. The fact that the languages of the alcohol abuse and drug abuse provisions are identical for this purpose makes the conferees' construction especially meaningful.

or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients that are pertinent to such grants or contracts.

§ 412. National Drug Abuse Training Center.

(a) The Director shall establish a National Drug Abuse Training Center (hereinafter in this section referred to as the "Center") to develop, conduct, and support a full range of training programs relating to drug abuse prevention functions. The Director shall consult with the National Advisory Council for Drug Abuse Prevention regarding the general policies of the Center. The Director may supervise the operation of the Center initially, but shall transfer the supervision of the operation of the Center to the National Institute on Drug Abuse not later than December 31, 1974.

Transfer of supervision.

(b) The Center shall conduct or arrange for training programs, seminars, meetings, conferences, and other related activities, including the furnishing of training and educational materials for use by others.

(c) The services and facilities of the Center shall, in accordance with regulations prescribed by the Director, be available to (1) Federal, State, and local government officials, and their respective staffs, (2) medical and paramedical personnel, and educators, and (3) other persons, including drug dependent persons, requiring training or education in drug abuse prevention.

(d) (1) For the purpose of carrying out this section, there are authorized to be appropriated \$1,000,000 for the fiscal year ending June 30, 1972, \$3,000,000 for the fiscal year ending June 30, 1973, \$5,000,000 for the fiscal year ending June 30, 1974, and \$6,000,000 for the fiscal year ending June 30, 1975.

Appropriation.

(2) Sums appropriated under this subsection shall remain available for obligation or expenditure in the fiscal year for which appropriated and in the fiscal year next following.

§ 413. Drug abuse among Federal civilian employees.

(a) The Civil Service Commission shall be responsible for developing and maintaining, in cooperation with the Director and with other Federal agencies and departments, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among Federal civilian employees. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.

(b) The Director shall foster similar drug abuse prevention, treatment, and rehabilitation programs and services in State and local governments and in private industry.

(c) (1) No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse.

(2) This subsection shall not apply to employment (A) in the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, or any other department or agency of the Federal Government designated for purposes of national security by the President, or (B) in any position in any department or agency of the Federal Government, not referred to in clause (A), which position is determined pursuant to regulations prescribed by the head of such department or agency to be a sensitive position.

Exception.

(d) This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

I have tried to determine whether S. 2056 is going to seriously tie the President's hands in a highly undesirable way or whether we are simply posturing the Senate without truly altering the power of the Commander in Chief to "make war." Either outcome, in the extreme, would be undesirable and we must never underestimate its impact on foreign powers, who could misinterpret our actions and thus miscalculate in terms of their dealing with us in the future.

Seventh, lastly, I believe that the Congress has lost much of its say in shaping our foreign policy because we have not used the authority granted to us in the Constitution. We have abused our power by failing to use it in the vigorous way envisioned by the Framers of the Constitution. The Senate and the House can begin today to take meaningful steps designed to restore the balance between Capitol Hill and the White House on matters of foreign and military policy. For instance, we could:

First, we can avoid the open ended—blank check—resolutions, such as the Middle East resolution, the Formosa resolution, and so forth, that have remained in effect long after the initial crisis has subsided, thus forming the base for future presidential actions.

Second, we can avoid the indiscriminate use of the national security waiver which has become a current device for allowing the Congress to appear to be making a foreign policy decision when such is not the case. For example, the Congress recently voted to terminate aid to Greece when everyone in this body was certain that the President would invoke the waiver. Thus we postured ourselves but we did not really add credibility to the claim that Congress contributes to the making of foreign policy. We asserted ourselves on the issue of the importation of Rhodesian chrome ore and the foreign policy of the United States was adjusted in accordance with the will of the Congress.

It is substantive actions on the part of the Congress that will redress the current imbalance in power between the legislative and executive branches of our Government. I believe that the pending bill is a substitute for meaningful congressional action. We will not recover our authority by standing on the beach and telling the tide to recede.

Mr. President, we are dealing with an extremely volatile matter, with its passionate fires fanned by the issues of the day. This is no ordinary piece of legislation. What we have before us is, in effect, a de facto amendment to our Constitution. Such an important step, I believe, demands that we not hasten into a course of action which may well come back to haunt us at some future date.

In today's Washington Post column entitled "Hot-Stove Legislation—bill would curb warmaking power of past presidents," Kenneth Crawford reminds us that earlier Congresses have responded to similar pressures by enacting legislation based on hindsight that proved to be detrimental in a rapidly changing world. In his article he states that—

"After the first world war and a Senate investigation of 'merchants of death,' the House and Senate wrote a set of neutrality laws to prevent President Wilson, then long dead, from involving the U.S. in a European war. The effect of these laws was to hamstring President Roosevelt in his attempt to help contain Adolph Hitler before the Nazis could overrun all of Europe and precipitate another world war. Obviously, Hitler posed a different and more serious threat to the world than Kaiser Wilhelm had. Fortunately, Roosevelt, before it was too late, found ways through, over and around the neutrality laws."

By Mr. HUGHES (for himself, Mr. CRANSTON, Mr. MONDALE, Mr. MOSS, Mr. JAVITS, and Mr. WILLIAMS):

S. 3502. A bill to amend subchapter III of chapter 83 of title 5, United States Code, with respect to the meaning of disability for civil service retirement, and for other purposes. Referred to the Committee on Post Office and Civil Service.

Mr. HUGHES. Mr. President, I am today introducing legislation to amend the Civil Service Retirement Act to delete from the act language which, by barring recognition of alcoholism as a disabling disease, leads to widespread inequities in the treatment accorded to Federal employees who have become disabled by reason of alcoholism.

On December 31, 1970, the President signed into law the landmark Public Law 91-616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, which I had introduced in this body. Passed unanimously by both houses of Congress, this law recognized that alcoholism is properly regarded as an illness or disease and, as a public health problem, is appropriately and effectively handled only through medical and rehabilitative treatment. It created an institute through which a broad range of prevention, training, rehabilitation and research programs would be developed.

Recognizing that the Federal Government, as the Nation's largest employer, should set an example to the rest of industry in its handling of alcoholic employees, the act required that no Federal employee should be discriminated against with regard to any facet of his employment because he has an alcohol problem, but that the alcoholic employee have the same rights and protections as an employee suffering from any other disease.

The Civil Service Retirement Act now prohibits the granting of disability retirement if the disability is due to "vicious habits, intemperance, or willful misconduct" during the preceding 5 years. This language is repeated in the medical forms to be submitted by the examining physician. As a result, depending upon the physician's personal views and attitudes toward alcoholism, a subject on which most physicians have little professional training, he may hide the alcoholism behind references to such concurrent diseases as liver or brain damage, which would support the application for disability retirement, or record the disability as alcoholism and regard an affirmative answer to the question relating to "vicious habits, intemperance, or willful misconduct," thus denying the financial protection to the applicant and his family which may have been earned throughout many years of efficient job performance.

Under Public Law 91-616, the Civil Service Commission has made great progress in developing an enlightened program for the early identification and treatment of employees who suffer from alcoholism. I believe that this bill would continue to the success of that program

by removing one of the fears which may hinder the employee from seeking help as soon as his disease begins to manifest itself and at a stage when treatment and rehabilitative efforts have the greatest chance of restoring the alcoholic to health and productive service.

By Mr. HARRIS:

S. 3503. A bill to prohibit the Tennessee Valley Authority from acquiring or utilizing, in carrying out its operations and functions, any coal mined by strip mining methods. Referred to the Committee on Public Works.

TVA SHOULD BE PROHIBITED FROM USING STRIP-MINED COAL

Mr. HARRIS. Mr. President, I have lately held ad hoc public hearings in east Tennessee and east Kentucky on the exploitation of people and natural resources which is inherent in the strip-mining of coal. I have expressed to the Senate Interior and Insular Affairs Committee, now considering this matter, my strong opinion that strip mining should be absolutely prohibited. The counties of east Tennessee and of east Kentucky where strip mining is being done are counties with some of the richest natural resources and some of the poorest people in America. They are dominated by huge landholdings, and more and more deep mining jobs have been lost to the big machines. Strip mining permanently ravages the hills and valleys. There can be no real reclamation. Moreover, the streams are ruined by run-off acids, and flooding is becoming worse and worse because of the sediment in the stream beds.

One of the worst offenders is the Tennessee Valley Authority, because of its large purchases of strip-mined coal. I believe that the late Senator George Norris and others who envisioned TVA as an agency which would protect the hills and waters of Appalachia, uplift the lives of the people of the area and stop the awful flooding which had been a central feature of its history, would be greatly saddened today to know that, because of its almost insatiable appetite for cheap coal, TVA is one of the originators of strip mining and is today one of its strongest supporters.

I believe that strip mining should be absolutely prohibited. Then we could seriously consider alternative energy sources, including an increase in deep mining with stricter safety requirements. This would provide many, many more jobs.

In the meantime and at the very least, I believe the Government should set an example. I believe TVA should be prohibited from purchasing strip-mined coal. This would go a long way toward righting the awful wrongs now being done to the land and people in coal country, including my own State.

TVA consumes about 35 million tons of coal each year. In 1970 and 1971 approximately 60 percent of this coal came from surface mines.

92D CONGRESS
2d Session

SENATE

REPORT
No. 92-700

DRUG ABUSE OFFICE AND TREATMENT ACT OF 1972

MARCH 17, 1972.—Ordered to be printed

Mr. HUGHES, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 2097]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2097) to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

§ 1. *Short title.*

This Act may be cited as the "Drug Abuse Office and Treatment Act of 1972".

TITLE I—FINDINGS AND DECLARATION OF POLICY; DEFINITIONS; TERMINATION

Sec.

- 101. *Congressional findings.*
- 102. *Declaration of national policy.*
- 103. *Definitions.*
- 104. *Termination.*

§ 101. *Congressional findings.*

The Congress makes the following findings:

- (1) *Drug abuse is rapidly increasing in the United States and now afflicts urban, suburban, and rural areas of the Nation.*
- (2) *Drug abuse seriously impairs individual, as well as societal, health and well-being.*

mental status of such employees under the Postal Reorganization Act. The Postal Service stated that it was their intention to make every effort to cooperate with the Special Action Office, and to establish a program, modeled on that established for other Federal employees, for the treatment of drug abuse among postal employees.

This section establishes the principle that drug abuse and drug dependence shall be handled by Federal departments and agencies as a medical problem for the employee involved. The provision is almost identical to section 201 of the Alcohol and Alcohol Abuse Prevention and Treatment Act of 1970, and should be administered in a similar manner. Thus, except for certain designated sensitive agencies and sensitive positions, an employee may not be dismissed solely because of prior drug abuse. Except for the designated agencies and positions, Federal employees may have their employment terminated only for failure to perform their jobs. All Federal civilian employees dismissed, including those in the agencies and positions listed in subsection (c)(2) of this section, are to be treated alike with respect to retention of collateral benefits. Accordingly, any dismissed employee's rights to annual and sick leave, medical treatment, rehabilitation services, pension, and other collateral rights should be preserved to the same extent as they would be for employees who have lost their jobs due to other medical disabilities.

REORGANIZATION PLANS

The Senate bill provided that the President may change the functions of the Director by reorganization plans without regard to the cutoff date for the submission of plans and the limits on the number that may be submitted.

A similar provision in the House version was deleted by an amendment on the House floor, so that the House amendment contained no comparable provision.

The conference substitute is the same as the House amendment.

CLASSIFICATION OF DRUGS

The Senate bill provided that the Director should consult with and be consulted by appropriate officials regarding classification of drugs under the Controlled Substances Act, and investigational new drugs with a potential for abuse. The Director had similar responsibilities with respect to international questions of classification of drugs, and with respect to New Drug Applications.

The House amendment contained no corresponding provisions.

The conference substitute provides that whenever the Attorney General determines that there is evidence that a drug which is not a controlled substance may be subject to abuse, or that a controlled substance should be transferred or removed from a schedule under the Controlled Substances Act, he shall, prior to the initiation of a formal proceeding for such transfer, removal, or control, notify the Director. In addition, when information is developed with respect to an investigational new drug indicating that the drug has a potential for abuse, that information which is forwarded to the Attorney General as required by the Controlled Substances Act shall also be forwarded to the Director.